Supreme Court, U.S.
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No. 99-009

IN THE

SUPREME COURT OF THE UNITED STATES

OLIVER & WRIGHT MOTORS, INC., etc.,

Petitioners,

v.

CITY OF HOOVER and
CITY OF ALBERTVILLE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA

BRIEF OF RESPONDENT, CITY OF HOOVER, IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Respondent objects to the question presented for review in Petitioners' Writ for Certiorari because it misstates the issue decided by the Supreme Court of Alabama. Rather, based on the decision of the Supreme Court of Alabama, the following question is presented for review:

> **WHETHER MUNICIPALITIES CAN CONSTITUTIONALLY EXERCISE THE POWER DELEGATED TO THEM BY THE ALABAMA STATE LEGISLATURE CONTAINED IN [§11-51-206, ALA. CODE 1975], WHICH ALLOWS THEM TO IMPOSE SALES TAXES ON RETAIL CONSUMERS FOR PURCHASES FROM BUSINESSES LOCATED OUTSIDE THE CORPORATE LIMITS BUT WITHIN THEIR RESPECTIVE POLICE JURISDICTIONS?**

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TABLE OF AUTHORITIES

Cases:

Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 99 S.Ct. 383, 58 L.Ed.2d 292 (1978) 2

Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S.Ct. 2946, 69 L.Ed.2d 884 (1981) 2

Other Authorities:

28 U.S.C. §1254 1

28 U.S.C. §1257 1

Rule 10, U.S. Supreme Court 1

STATEMENT OF BASIS FOR JURISDICTION

Petitioners have improperly invoked this Court's jurisdiction. Petitioners correctly state that the Petition for Writ of Certiorari is from a decision of the Supreme Court of Alabama in a civil case. Accordingly, 28 U.S.C. §1257 (relating to this Court's review of final judgments or decrees rendered by the highest court of a State in which a decision may be had) is the appropriate basis of this Court's jurisdiction of the question presented in this case. Petitioners' statement that the basis for this Court's jurisdiction derives from 28 U.S.C. §1254 (relating to this Court's review of cases in the courts of appeals) is erroneous.

ARGUMENT

I.

PETITIONERS FAIL TO DEMONSTRATE A COMPELLING REASON WHY THIS COURT'S REVIEW OF THE QUESTION PRESENTED IS APPROPRIATE.

Supreme Court Rule 10 indicates the character of the reasons this Court considers in exercising its discretion to grant a petition for writ of certiorari. While apparently relying on Supreme Court Rule 10(c) in support of the Petition for Writ of Certiorari, Petitioners raise no important federal question that has not been settled by this Court, nor one that is in conflict with the relevant decisions of this Court. Instead, Petitioners misstate the federal question decided by the Supreme Court of Alabama in this case to avoid the relevant decisions of this Court that actually support the decision of the Supreme Court of Alabama on the question presented for review.

II.

THE SUPREME COURT OF ALABAMA PROPERLY DECIDED THE FEDERAL QUESTION PRESENTED IN THIS CASE.

Petitioners acknowledge in the Petition for Writ of Certiorari that this Court has held that police jurisdiction residents are not entitled to participate in the municipal franchise. *Holt Civic Club v. City of Tuscaloosa,* 439 U.S. 60, 99 S.Ct. 383, 58 L.Ed.2d 151 (1978). In the absence of a constitutional right to vote in municipal elections, Petitioners have no grounds for requesting that this Court overturn the Supreme Court of Alabama's rationale basis review of the challenged scheme of taxation. Petitioners' claim that Petitioners are aware of no prior cases allowing a governmental entity to tax activities outside of its borders for the purpose of raising general revenues ignores the decisions of this Court allowing States considerable latitude in establishing their internal fiscal policies. *See, e.g., Commonwealth Edison Company v. Montana,* 453 U.S. 609, 101 S.Ct. 2946, 69 L.Ed.2d 884 (1981).

Finally, Petitioners attempt to persuade this Court to apply an interstate commerce analysis to the challenged statute by generically characterizing Respondent as a governmental entity taxing activities outside of its borders. This case does not trigger an interstate commerce analysis, however, because the challenged statute authorizes a political subdivision of the State of Alabama to impose a general revenue tax on transactions occurring within the State of Alabama's borders. Petitioners may disagree with the State of Alabama's chosen method of taxation in this case, however, Petitioners' arguments should be addressed to the Alabama State Legislature rather than to this Court.

CONCLUSION

Petitioners' Writ of Certiorari should be denied.

Respectfully submitted,

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